



9111-14

## **DEPARTMENT OF HOMELAND SECURITY**

### **U.S. Customs and Border Protection**

#### **Automated Commercial Environment (ACE) Export Manifest for Air Cargo Test**

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** General notice.

**SUMMARY:** This document announces that U.S. Customs and Border Protection (CBP) plans to conduct the Automated Commercial Environment (ACE) Export Manifest for Air Cargo Test, a National Customs Automation Program (NCAP) test concerning ACE export manifest capability. The ACE Export Manifest for Air Cargo Test is a voluntary test in which participants agree to submit export manifest data electronically, at least 4 hours prior to loading of the cargo onto the aircraft in preparation for departure from the United States. CBP regulations require carriers to submit a paper manifest for export air shipments generally within 4 days after departure. This notice provides a description of the test, sets forth eligibility requirements for participation, and invites public comment on any aspect of the test.

**DATES:** The test will begin no earlier than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] and will run for approximately two years. CBP is accepting applications for participation in this planned test until CBP has received applications from nine parties that meet all test participant requirements.

Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

**ADDRESSES:** Applications to participate in the ACE Export Manifest for Air Cargo Test must be submitted via email to CBP Export Manifest at [cbpexportmanifest@cbp.dhs.gov](mailto:cbpexportmanifest@cbp.dhs.gov). In the subject line of the email, please use “ACE Export Manifest for Air Cargo Test Application”. Written comments concerning program, policy, and technical issues may also be submitted via email to CBP Export Manifest at [cbpexportmanifest@cbp.dhs.gov](mailto:cbpexportmanifest@cbp.dhs.gov). In the subject line of the email, please use “Comment on ACE Export Manifest for Air Cargo Test”.

**FOR FURTHER INFORMATION CONTACT:** Robert Rawls, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs & Border Protection, via email at [Robert.Rawls@dhs.gov](mailto:Robert.Rawls@dhs.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

##### The National Customs Automation Program

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, Dec. 8, 1993) (Customs Modernization Act) (19 U.S.C. 1411-14). Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade,

ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace a specific legacy ACS or paper function. Each release begins with a test and ends with mandatory use of the new ACE feature, thus retiring the legacy ACS or paper function. Each release builds on previous releases and sets the foundation for subsequent releases.

#### Authorization for the Test

The Customs Modernization Act provides the Commissioner of CBP with the authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The test described in this notice is authorized pursuant to the Customs Modernization Act and section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. As provided in 19 CFR 101.9(b), for purposes of conducting an NCAP test, the Commissioner of CBP may impose requirements different from those specified in the CBP regulations.

#### International Trade Data System (ITDS)

This test is also in furtherance of the International Trade Data System (ITDS) key initiatives, set forth in section 405 of the Security and Accountability for Every Port Act of 2006 (Pub. L. 109-347, 120 Stat. 1884, Oct. 13, 2006) (SAFE Port Act) (19 U.S.C. 1411(d)) and Executive Order 13659 of February 19, 2014, Streamlining the

Export/Import Process for America's Businesses. The purpose of ITDS, as stated in section 405 of the SAFE Port Act, is to eliminate redundant information requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies. CBP is developing ACE as the "single window" for the trade community to comply with the ITDS requirement established by the SAFE Port Act.

Executive Order 13659 requires that by December 2016, ACE, as the ITDS single window, have the operational capabilities to serve as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export, and to transition from paper-based requirements and procedures to faster and more cost-effective electronic submissions to, and communications with, U.S. government agencies.

### **Current Air Cargo Export Information Requirements**

Under 19 CFR 122.72, 19 CFR 122.73, 19 CFR 122.74, 19 CFR 122.75, and 19 CFR 192.14, certain information must be submitted to CBP for aircraft with export cargo leaving the United States for any foreign area.<sup>1</sup> In most cases, the aircraft commander or agent must file a general declaration on CBP Form 7507 pertaining to the outbound

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<sup>1</sup> Section 122.72 requires the filing of a general declaration, an air cargo manifest, and any required Shipper's Export Declarations. Shipper's Export Declarations were the Department of Commerce paper forms used by the Bureau of the Census under the Foreign Trade Statistics Regulations to collect information from an entity exporting from the United States. These forms were used for compiling the official U.S. export statistics for the United States and for export control purposes. The Shipper's Export Declarations became obsolete on October 1, 2008, with the implementation of the Foreign Trade Regulations (FTR) and have been superseded by the Electronic Export Information (EEI) filed in AES or through the AESDirect. See 15 CFR 30.1. See also 19 CFR 192.14, regarding required EEI.

flight. Also, the aircraft commander or agent must file the air cargo manifest, CBP Form 7509, with CBP at each port where export cargo is loaded on the aircraft. Under 19 CFR 122.74, the airline must file the complete air cargo manifest generally within 4 days after departure of the aircraft. Finally, the U.S. Principal Party in Interest (USPPI) must file any required Electronic Export Information (EEI) for the cargo on the aircraft.<sup>2</sup> More details regarding the manifest requirements, the subject of this test, are provided in the next section.

#### Current Air Cargo Manifest Requirements

As indicated in the previous section, the aircraft commander or agent must file copies of the air cargo manifest on CBP Form 7509. CBP Form 7509 consists of the following data elements:

- 1) Owner/Operator
- 2) Marks of nationality and registration
- 3) Flight number
- 4) Port of lading
- 5) Port of unloading
- 6) Date
- 7) Consolidator (conditional)
- 8) De-consolidator (conditional)
- 9) Air waybill type (Master, House, or Sub)
- 10) Air waybill number

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<sup>2</sup> The USPPI is defined in the FTR as the person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. Generally, that person or entity is the U.S. seller, manufacturer, or order party, or the foreign entity while in the United States when purchasing or obtaining the goods for export. 15 CFR 30.1.

- 11) Number of pieces
- 12) Weight (kg./lb.)
- 13) Number of house air waybills
- 14) Shipper name and address
- 15) Consignee name and address
- 16) Nature of goods
- 17) Internal Transaction Number (ITN) or AES Exemption Statement<sup>3</sup>

The air cargo manifest may be filed in complete form or incomplete form (pro forma). Under 19 CFR 122.74, the complete manifest must be filed with CBP before the aircraft will be cleared to depart during any time covered by a proclamation of the President that a state of war exists between foreign nations, or if the aircraft is departing on a flight from the United States directly or indirectly to a foreign country listed in 19 CFR 4.75. Otherwise, for shipments to a foreign country, an incomplete manifest may be filed with CBP at the departure airport when accompanied by the proper bond. For shipments on direct flights to Puerto Rico, an incomplete manifest may be filed with CBP upon arrival in Puerto Rico. If the complete manifest will not be filed within one business day of arrival in Puerto Rico, the proper bond must be filed at that time.

Under the bond accompanying the incomplete manifest, the complete manifest must be filed with CBP by the airline within the appropriate time period. For shipments to foreign countries, the complete manifest must generally be filed no later than 4 business days post-departure. For shipments between the United States and Puerto Rico, the complete manifest must be filed no later than 7 business days after arrival into or

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<sup>3</sup> Though not a data element on CBP Form 7509 itself, the carrier must include the ITN or AES Exemption Statement on the outward manifest pursuant to 19 CFR 192.14(c)(3).

departure from Puerto Rico. For shipments between the United States or Puerto Rico and U.S. possessions, the complete manifest must be filed no later than 7 business days after departure.

#### Trade Act and the Automated Export System (AES)

Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 2071 note), requires CBP to promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail, or truck). The required cargo information is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP. Section 192.14 of title 19 of the Code of Federal Regulations (19 CFR 192.14) implements the requirements of the Trade Act with regard to cargo departing the United States.

While the air cargo manifest described above must be submitted by the aircraft commander or agent, that is, by the air carrier, any required EEI must be filed by the USPPI under 19 CFR 192.14. Using a CBP-approved EDI system, the USPPI or its authorized agent must transmit and verify system acceptance of this EEI, generally no later than 2 hours prior to the scheduled departure time of the aircraft from the last U.S. port. The air carrier may not load cargo without first receiving from the USPPI or its authorized agent either the related EEI filing citation, covering all cargo for which the EEI is required, or exemption legends, covering cargo for which EEI need not be filed. The outbound air carrier then must annotate the air cargo manifest, waybill, or other

export documentation with the applicable AES proof of filing, post departure, downtime, exclusion or exemption citations, conforming to the approved data formats found in the Bureau of the Census Foreign Trade Regulations (FTR) (15 CFR part 30).

### **Description of the ACE Export Manifest for Air Cargo Test**

#### Purpose

The ACE Export Manifest for Air Cargo Test will test the functionality regarding the filing of export manifest data for air cargo electronically to ACE in furtherance of the ITDS initiatives described above. CBP has re-engineered AES to move it to an ACE system platform. The re-engineering and incorporation of AES into ACE will result in the creation of a single automated export processing platform for certain export manifest, commodity, licensing, export control, and export targeting transactions. This will reduce costs for CBP, partner government agencies, and the trade community and improve facilitation of export shipments through the supply chain.

The ACE Export Manifest for Air Cargo Test will also test the feasibility of requiring the manifest information to be filed electronically in ACE within a specified time before the cargo is loaded on the aircraft. (Under the current regulatory requirements, the complete manifest is required to be submitted by the airline on paper CBP Form 7509 generally after the departure of the aircraft). As described in the paragraph below, in the test, participants will submit export manifest data electronically to ACE at least 4 hours prior to loading of the cargo. This will enable CBP to easily link the EEI submitted by the USPPI with the export manifest information earlier in the process. This capability will better enable CBP to assess risk and effectively target and



inspect shipments prior to the loading of cargo to ensure compliance with all U.S. export laws.

### Procedures

Participants in the ACE Export Manifest for Air Cargo Test agree to provide export manifest data electronically at least 4 hours prior to loading of the cargo onto the aircraft in preparation for departure from the United States. If the air carrier files this ACE Export Manifest data, the electronic filing is in lieu of the paper filing of CBP Form 7509. If a freight forwarder files the ACE Export Manifest data, the carrier is still required to file the CBP Form 7509 (or ACE Export Manifest data, if the air carrier is also a test participant).

The ACE Export Manifest data submission will be used to target high-risk air cargo. The data should be available to test participants early in the planning stages of an export air cargo transaction. It is anticipated that data provided 4 hours prior to loading will permit adequate time for proper risk assessment and identification of shipments to be inspected early enough in the supply chain to enhance security while minimizing disruption to the flow of goods.

Any air cargo identified as potentially high-risk will receive a hold until required additional information related to the shipment is submitted to clarify non-descriptive, inaccurate, or insufficient information, a physical inspection is performed, or some other appropriate action is taken, as specified by CBP. Once the cargo is cleared for loading, a release message will be generated and transmitted to the filer.

## Data Elements

The ACE Export Manifest for Air Cargo Test data elements are similar, but not identical to the data elements required on CBP Form 7509. The data elements are mandatory unless otherwise indicated. Data elements that are indicated as “conditional” must be transmitted to CBP only if the particular information pertains to the cargo. The ACE Export Manifest for Air Cargo data elements are to be submitted at the lowest bill level. The data elements consist of:

- 1) Exporting Carrier (CBP finds this term to be clearer than the term  
“Owner/Operator” used on CBP Form 7509)
- 2) Marks of nationality and registration
- 3) Flight number
- 4) Port of lading
- 5) Port of unloading
- 6) Scheduled date of departure (CBP finds this term to be clearer than the term  
“Date” used on CBP Form 7509)
- 7) Consolidator (conditional)
- 8) De-consolidator (conditional)
- 9) Air waybill type (Master, House, Simple or Sub)
- 10) Air Waybill number
- 11) Number of pieces and unit of measure
- 12) Weight (kg./lb.)
- 13) Number of house air waybills
- 14) Shipper name and address

- 15) Consignee name and address
- 16) Cargo description (CBP finds this term to be clearer than the term “Nature of goods” used on CBP Form 7509)
- 17) AES Internal Transaction Number (ITN) or AES Exemption Statement/Exception Classification (per shipment)
- 18) Split air waybill indicator (conditional)
- 19) Hazmat indicator (Yes/No)
- 20) UN Number (conditional) (If the hazmat indicator is yes, the four-digit UN (United Nations) Number assigned to the hazardous material must be provided.)
- 21) In-bond number (conditional)
- 22) Mode of transportation (Air, containerized or Air, non-containerized)

There are currently no additional data elements identified for other participating U.S. Government Agencies (PGAs) for the ACE Export Manifest for Air Cargo Test. However, CBP may enhance the test in the future with additional data or processing capabilities to assist with facilitation of air shipment movements and to be consistent with Executive Order 13659. Any such enhancement will be announced in the **Federal Register**.

#### Eligibility Requirements

CBP is limiting this test to nine stakeholders in the air cargo environment.

Specifically, CBP is seeking participation from:

- At least three, but no more than six, air carriers currently required to file paper export air cargo manifest CBP Form 7509 under 19 CFR 122.72 and 122.73; and

- At least three, but no more than six, freight forwarders.

There are no restrictions with regard to organization size, location, or commodity type. However, participation is limited to those parties able to electronically transmit export manifest data in the identified acceptable format. Prospective ACE Export Manifest for Air Cargo Test participants must have the technical capability to electronically submit data to CBP and receive response message sets via Cargo-IMP, AIR CAMIR, XML, or Unified XML, and must successfully complete certification testing with their client representative. (Unified XML may not be immediately available at the start of the test. However, parties wishing to utilize Unified XML may be accepted, pending its development and implementation). Once parties have applied to participate, they must complete a test phase to determine if the data transmission is in the required readable format. Applicants will be notified once they have successfully completed testing and are permitted to participate fully in the test. In selecting participants, CBP will take into consideration the order in which the applications are received.

#### Conditions of Participation

Test participants agree to submit export manifest data electronically to CBP via an approved EDI at least 4 hours prior to the loading of the cargo onto the aircraft in preparation for departure from the United States. In addition, test participants agree to establish operational security protocols that correspond to CBP hold messages that mandate the participant to take responsive action and respond to CBP confirming that the requested action was taken to mitigate any threat identified, respond promptly with complete and accurate information when contacted by CBP with questions regarding the data submitted, and comply with any “Do Not Load” instructions.

Finally, test participants agree to participate in any teleconferences or meetings established by CBP, when necessary, to ensure any challenges, or operational or technical issues regarding the test are properly communicated and addressed.

Participation in the ACE Export Manifest for Air Cargo Test does not impose any legally binding obligations on either CBP or the participant, and CBP generally does not intend to enforce or levy punitive measures if test participants are non-compliant with these conditions of participation during the test.

#### Application Process and Acceptance

Those interested in participating in the ACE Export Manifest for Air Cargo Test should submit an email to CBP Export Manifest at [cbpexportmanifest@cbp.dhs.gov](mailto:cbpexportmanifest@cbp.dhs.gov), stating their interest and their qualifications based on the above eligibility requirements. The email will serve as an electronic signature of intent to participate and must also include a point of contact name and telephone number. Applications will be accepted until CBP has received applications from nine parties that meet all test participant requirements. CBP will notify applicants whether they have been selected to participate in the test. Applicants will also be notified once they have successfully completed testing and are permitted to participate fully in the test.

Test participants will receive technical, operational, and policy guidance through all stages of test participation, from planning to implementation, on the necessary steps for the transmission of electronic export manifest data.

#### Costs to ACE Export Manifest for Air Cargo Test Participants

ACE Export Manifest for Air Cargo Test participants are responsible for all costs incurred as a result of their participation in the test and such costs will vary, depending on

their pre-existing infrastructures. Costs may be offset by a significant reduction in expenses associated with copying, storing, and courier services for presenting the paper manifest to CBP.

#### Benefits to ACE Export Manifest for Air Cargo Test Participants

While the benefits to ACE Export Manifest for Air Cargo Test participants will vary, several advantages of joining may include:

- Reduction in costs associated with generating copies, transportation, and storage of paper manifest documentation;
- Increases in security by leveraging CBP threat model and other data to employ a risk-based approach to improve air cargo security and to ensure compliance with U.S. export laws, rules and regulations through targeted screening;
- Gains in efficiencies by automating the identification of high-risk cargo for enhanced screening;
- The ability to provide input into CBP efforts to establish, test, and refine the interface between government and industry communication systems for the implementation of the electronic export manifest; and
- Facilitation of corporate preparedness for future mandatory implementation of electronic export manifest submission requirements.

#### Waiver of Certain Regulatory Requirements

For purposes of this test, the requirement to file a paper CBP Form 7509, as provided in 19 CFR 122.72-122.75 will be waived for air carrier test participants that submit the ACE Export Manifest for Air Cargo data elements electronically as described above. If a freight forwarder submits the electronic ACE Export Manifest data, the air

carrier is still required to file the paper CBP Form 7509 (or the electronic ACE Export Manifest data, if the air carrier is a test participant). The air carrier maintains responsibility for submitting the manifest data to CBP to cover all cargo on the aircraft, even if the freight forwarder has also submitted manifest data. Participation in the test does not alter the participant's obligations to comply with any other applicable statutory and regulatory requirements, including 19 CFR 122.72-122.75, and participants will still be subject to applicable penalties for non-compliance. In addition, submission of data under the pilot does not exempt the participant from any CBP or other U.S. Government agency program requirements or any statutory sanctions in the event that a violation of U.S. export laws or prohibited articles are discovered within a shipment/container presented for export destined from the United States on an aircraft owned and/or operated by the participant.

#### Duration and Evaluation of the ACE Export Manifest for Air Cargo Test

The test will be activated on a case-by-case basis with each participant and may be limited to a single or small number of ports until any operational, training, or technical issues on either the trade or government side are established and/or resolved. The test will run for approximately two years from [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. While the test is ongoing, CBP will evaluate the results and determine whether the test will be extended, expanded to include additional participants, or otherwise modified. CBP will announce any such modifications by notice in the **Federal Register**. When sufficient test analysis and evaluation has been conducted, CBP intends to begin rulemaking to require the submission of electronic export manifest data before the cargo is loaded onto the aircraft

for all international shipments destined from the United States. The results of the test will help determine the relevant data elements, the time frame within which data should be submitted to permit CBP to effectively target, identify, and mitigate any risk with the least impact practicable on trade operations, and any other related procedures and policies.

#### Confidentiality

All data submitted and entered into ACE is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. However, participation in this or any ACE test is not confidential and upon a written Freedom of Information Act (FOIA) request, the name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

#### **Misconduct Under the Test**

If a test participant fails to abide by the rules, procedures, or terms and conditions of this and all other applicable **Federal Register** Notices, fails to exercise reasonable care in the execution of participant obligations, or otherwise fails to comply with all applicable laws and regulations, then the participant may be suspended from participation in this test and/or subjected to penalties, liquidated damages, and/or other administrative or judicial sanction. Additionally, CBP has the right to suspend a test participant based on a determination that an unacceptable compliance risk exists.

If CBP determines that a suspension is warranted, CBP will notify the participant of this decision, the facts or conduct warranting suspension, and the date when the suspension will be effective. In the case of willful misconduct, or where public health interests or safety are concerned, the suspension may be effective immediately. This



decision may be appealed in writing to the Assistant Commissioner, Office of Field Operations, within 15 days of notification. The appeal should address the facts or conduct charges contained in the notice and state how the participant has or will achieve compliance. CBP will notify the participant within 30 days of receipt of an appeal whether the appeal is granted. If the participant has already been suspended, CBP will notify the participant when their participation in the test will be reinstated.

### **Paperwork Reduction Act**

As noted above, CBP will be accepting no more than nine participants in the ACE Export Manifest for Air Cargo Test. This means that fewer than ten persons will be subject to any information collections under this test. Accordingly, collections of information within this notice are exempted from the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3502 and 3507).

Dated: July 7, 2015.

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Todd C. Owen,  
Assistant Commissioner,  
Office of Field Operations.

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